

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 5, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0020-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL R. McBRIDE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Shawano County: JAMES P. JANSEN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Daniel McBride appeals his conviction of two counts of threatening to injure a public officer as a repeater. The jury found him guilty of sending threatening letters to two trial court judges in an attempt to influence their sentencing decisions in two criminal cases. The prosecution relied to a large extent on the testimony of a handwriting expert, who identified the handwriting as McBride's. McBride argues that the trial court erroneously excluded (1) lay witness testimony differentiating McBride's handwriting with

the handwriting on the threatening letters, and (2) character evidence concerning McBride's nonviolent nature under § 904.04(1)(a), STATS. We reject these arguments and therefore affirm McBride's conviction.

McBride has no basis to challenge the trial court's exclusion of lay witness handwriting testimony. McBride objected to the prosecution's attempt to introduce similar lay witness testimony. The trial court sustained his objection. McBride's objection laid the groundwork for the trial court's subsequent decision to exclude McBride's lay witness handwriting testimony. As a result, even if the trial court later erroneously excluded McBride's lay witness handwriting testimony, McBride effectively invited the error by his earlier objection to the prosecution's evidence. Litigants who invite trial court error have no basis to complain of the error on appeal. See *In re Shawn B.N.*, 173 Wis.2d 343, 372, 497 N.W.2d 141, 152 (Ct. App. 1992). Moreover, as in other evidentiary questions, the trial court had discretion to exclude this evidence and could reasonably conclude, without erroneously exercising its discretion, that handwriting analysis required a level of expertise that both the prosecution's and McBride's lay witnesses lacked. See, e.g., *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983).

McBride also has no basis to challenge the trial court's exclusion of character evidence illustrating McBride's nonviolent nature. We are not persuaded it was error for the trial court to exclude this evidence. A person's reputation for nonviolence is irrelevant to a charge of using a "threat" of violence to achieve a result. Although this evidence may be relevant to whether a defendant may have actually committed a violent act, the concern here is only whether the threat was made. Therefore, we cannot say this was an unreasonable exercise of discretion to exclude this evidence.

Alternatively, even if § 904.04(1)(a), STATS., authorized admission of this evidence, its exclusion was harmless error. Trial court error is harmless whenever the State shows there is no reasonable possibility that the error affected the trial's outcome. *State v. Dyess*, 124 Wis.2d 525, 543, 370 N.W.2d 222, 231-32 (1985). Here, the prosecution's expert handwriting and fingerprint testimony was sufficiently persuasive to make the excluded character evidence inconsequential in terms of the trial's outcome. By different means, both prosecution experts convincingly identified McBride as the author of the threatening letters. No reasonable jury that rationally weighed the evidence

would have considered subjective testimony concerning McBride's nonviolent nature sufficient to overcome the prosecution's persuasive expert testimony concerning the physical evidence. As a result, the character evidence's exclusion had no reasonable possibility of having affected the trial's outcome.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.